

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Anastos Media Group, Inc.)	File No. EB-02-BF-015
Licensee of WUAM(AM))	NAL/Acct. No. 200232280002
Malta, New York)	FRN: 0006-5575-99

MEMORANDUM OPINION AND ORDER

Adopted: April 28, 2003

Released: April 30, 2003

By the Chief, Enforcement Bureau:

I. Introduction

1. In this *Memorandum Opinion and Order* (“*Order*”), we cancel a \$7,000 forfeiture proposed against Anastos Media Group, Inc. (“Anastos Media”) for willfully violating Section 73.49 of the Commission’s Rules (“Rules”).¹ The noted violation involves Anastos Media’s failure to enclose WUAM(AM)’s antenna structure within effective locked fences or other structures.

2. On June 21, 2002, a Resident Agent from the Enforcement Bureau’s Buffalo, New York Resident Agent Office (“Buffalo Office”) issued a \$7,000 *Notice of Apparent Liability for Forfeiture* (“NAL”) to Anastos Media for the noted violation.² On July 19, 2002, Anastos Media filed a response to the NAL. Anastos Media supplemented its response on March 31, 2003.

II. Background

3. On February 7, 2002, a Buffalo Office Resident Agent inspected the antenna structure associated with Anastos Media’s AM Station, WUAM, in Saratoga Springs, New York. The Resident Agent observed that the gate providing access to the antenna structure’s base was unlocked and the gate itself was open in violation of Section 73.49 of the Rules. On February 13, 2002, the Resident Agent issued a *Notice of Violation* (“NOV”) to Anastos Media notifying it of the violation, and on June 21, 2002 issued Anastos Media a \$7,000 NAL for the willful violation of the noted rule.

4. In its response and supplemental response to the NAL, Anastos Media does not dispute the Resident Agent’s observation that on February 7, 2002, the gate providing access to its antenna structure’s base was unlocked and the gate itself was open. Anastos Media, instead,

¹ 47 C.F.R. § 73.49.

² *Anastos Media Group*, NAL/Acct. No. 200232280002 (Enf. Bur., Buffalo Resident Agent Office, rel. June 21, 2002).

surmises that an unknown third-party cut the lock and requests that we reduce or cancel the proposed forfeiture.

III. Discussion

5. The Buffalo Office Resident Agent assessed the forfeiture amount in this case in accordance with Section 503(b) of the Communications Act of 1934, as amended,³ and Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendments of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement").⁵ In examining Anastos Media's response and supplemental response to the *NAL*, Section 503(b) of the Act requires the Commission to take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁶

6. According to Anastos Media's president, in a statement submitted under the penalty of perjury, "it has been Anastos Media's regular practice to keep the gate around the base of WUAM(AM) tower locked," and to "check the WUAM(AM) tower gate to ensure that it remains locked." The president adds that Anastos Media did not become aware of the violation until it received the *NOV*, which, in its response to the *NOV*, it states was on February 15, 2002. That same day, the president continues, he asked the station's engineer to examine the site. The station's engineer reported that the gate's lock had been broken. Anastos Media replaced the lock later that day.

7. Anastos Media states that prior to receiving the *NOV*, it consented to have the antenna structure owner's engineer visit the site and make adjustments to Anastos Media's antenna tuning unit (Anastos Media leases the antenna structure). According to Anastos Media, the antenna structure owner subsequently notified it that the engineer visited the site and made adjustments to the antenna tuning unit. Anastos Media hypothesized in its response to the *NOV* that the antenna structure owner's engineer may have cut the lock to gain access to the site without notifying it. However, it states in its response to the *NAL* and reiterates in its supplement thereto that it does not in fact know who cut the lock.

8. Having a more complete record before us, we find, that in this instance, Anastos Media acted in good faith. The basis for our decision rests on Anastos Media's president's declarations, made under the penalty of perjury, of Anastos Media's regular practice to check the gate to ensure that it remained locked coupled with the fact that his investigation revealed that an unknown third-party cut the lock to the antenna structure gate. We further recognize that Anastos Media has a history of overall compliance with the Rules. Applying the two downward adjustment criteria to this case and the circumstances presented here, we find sufficient reason to cancel the \$7,000 proposed forfeiture.

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17,087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 U.S.C. § 503(b)(2)(D).

IV. Ordering Clauses

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 504(b) of the Communications Act of 1934, as amended,⁷ and Section 1.80(f)(4) of the Rules,⁸ the *NAL* **IS CANCELLED**.

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class and certified mail, return receipt requested, to Polly B. Smothergill, Esq., Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, D.C. 20037, and to J. Scott Collins, President, Anastos Media Group, Inc., 100 Saratoga Village Boulevard, 21 Malta Commons, Malta, New York 12020.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁷ 47 U.S.C. § 504(b).

⁸ 47 C.F.R. § 1.80(f)(4).